95-187 JUL 31 1995

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NO. 94-7053

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

William Patrick Pointon, Jr., Petitioner

vs.

City of Choctaw, Oklahoma; State of Okla. ex rel Oklahoma State Department of Health, Respondents

---

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

William Patrick Pointon, Jr., Pro Se
P.O. Box 308
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(405) 382-4007

Petitioner requests oral argument.

89 P

QUESTIONS PRESENTED

1. Does the "Bad Faith Doctrine" apply to Respondents when:

   (a) they continue to churn and multiply proceedings;

   (b) their proceedings have been mean spirited, frivolous, vindictive, and oppressive; and

   (c) they have caused unnecessary burdens on the courts?

2. Do a City and a State bureau have a license to wilfully violate, for three years, the permanent injunction of Petitioner's Bankruptcy Discharge by the use of the courts to shakedown in order to create a real estate monopoly for "Special Interests" in the Oklahoma City area?

3. Did the District Court abuse its discretion by denying attorney fees to Petitioner?

4. Did the Tenth Circuit Appeals Court err in denying attorneys' fees for "Bad Faith?"

PARTIES

1. The parties appear in the caption of this case. The two public entities operate under bureaucratic control.

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT . . . . . Page 1

OPINIONS BELOW . . . . . Page 2

JURISDICTION . . . . . Page 3

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED . . . . . Page 3

STATEMENT OF THE CASE . . . . . Page 4

REASONS FOR GRANTING THE WRIT . . Page 17

EXTORTIONIST SHAKEDOWN . . . . . Page 23

CONCLUSION . . . . . Page 25

INDEX TO APPENDICES

Appendix A — Opinion of the Court of Appeals in Banc on May 2, 1995.

Appendix B — Opinion of the Court of Appeals of March 28, 1995.

Appendix C — Minute Order of the District Court of March 1, 1994.

Appendix D — Affidavit of William Patrick Pointon, Jr., of September 20, 1993.

Appendix E — Shakedown Letter of April 6, 1993.

Appendix F — Shakedown Letter of January 10, 1994.

TABLE OF AUTHORITIES

CASES — Page

Chambers v Nasco, Inc., 115 L. Ed 2d 27 (1991) 17,18,19,20,21

In Re Kiker, 98 B.R. 103 (ND of Ga. 1988) 21

Hutto v Fronney, 437 US 678, 689, 57 L Ed 2nd 522, 98 S.Ct. 2565 . . . 20

In Re Myers, 18 B.R. 362 (1962) . . . 21

United States v The LTV Corp, (In Re Chateaugay Corp.), 944 F. 2d 997, 1008 (2nd Cir. 1991) 5

Universal Oil Products Co. v Root Refining Co., 32 8 US 575, 580, 90 L.Ed 1447, 66 S.Ct. 1176 20

STATUTES

United States Codes

Title 11 U.S.C. 524 4,13

Title 11 U.S.C. 106 13

Title 18 U.S.C. 1964 6,12

Title 28 U.S.C. 1254(1) 3

Title 28 U.S.C. 1927 4

Oklahoma Statutes

75 O.S. 301, et seq (Okla. Adm. Procedures Act) 7

12 O.S. 735 and 759 14

12 O.S. Chapter 15, Page 32 . . 15

United States Constitution

Eighth Amendment 4

Fourteenth Amendment 3

Others

Rule 11 F.R.C.P. 4,16

"Bad Faith Doctrine" 4

No. 94-7053

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 1994

William Patrick Pointon, Jr., Petitioner
vs.
City of Choctaw, Oklahoma; State of Oklahoma ex rel Oklahoma State Department of Health (OSDH), Respondents

---

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner, William Patrick Pointon, Jr., respectfully prays that a Writ of Certiorari issue to review the Judgment Opinion of the United States Court of Appeals for the Tenth Circuit and the District Court for the Eastern District of Oklahoma, refusing to grant attorneys' fees

to Petitioner after Respondents' relentless pursuit of Petitioner by filing in State Court and ruthlessly prosecuting an "Application for Citation for Contempt" with penalties of fine and incarceration two years after their questionable Judgment was discharged in the United States Bankruptcy Court. Respondents wilfully and maliciously violated Petitioner's permanent injunction of his Bankruptcy Discharge. They deliberately and excessively multiplied proceedings and viciously committed "Bad Faith" against Petitioner and burdened and perpetrated fraud upon the courts which was part of a sordid scheme of deliberate misuse of the judicial process. To let stand would be a desecration of the practice of law.

OPINIONS BELOW

The Opinion of the Court of Appeals for rehearing May 2, 1995, appears in

Appendix A to this Petition.

The Opinion of the Court of Appeals of March 28, 1995, appears in Appendix B.

The Minute Order of the District Court for the Eastern District of Oklahoma of March 1, 1994, appears in Appendix C.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on March 28, 1995. A timely Petition for Rehearing was filed on April 10, 1995. The Court of Appeals' denial of the Petition for Rehearing was issued on May 2, 1995, and is set forth in Appendix A. This Court's jurisdiction is invoked under Title 28, U.S.C. Sec.1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

Amendment Fourteen

"...no state shall deprive any person

of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment Eight

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

Statutes and Rules:

11 U.S.C. 524 Effect of Discharge

"(a) A discharge in a case under this title --
(1) voids any judgment at any time obtained,...
(2) operates as an injunction against the commencement or continuation of an action,..."

28 U.S.C. 1927

"Bad Faith Doctrine"

F.R.C.P. Rule 11

STATEMENT OF THE CASE

The The Tenth Circuit Appeals Court erred in its March 28, 1995 Order by not granting attorney's fees for "Bad Faith" and 28 U.S.C. 1927. The

Appeals Court stated in their order of March 28, 1995, that they had jurisdiction under 28 U.S.C. Secs. 158(d) and 1291.

First, the Petitioner did not own the sewer system in 1980 at the inception of this predatory litigation, therefore, there was never subject matter jurisdiction. Attached is an affidavit with documentary evidence, Appendix D pages 1 thru 34, which was filed in the Oklahoma County District Court previous to all of this litigation which clearly shows the system's owner is the City of Choctaw. This evidence is irrefutable.

Secondly, citation in the Appeals Court's recent Order of March 28, 1995, United States v. The LTV Corp. (In re Chateaugay Corp.), 944 F. 2d 997, 1008 (2nd Cir 1991) is inapplicable to the instant case because: title to the sewer system vests in the City of Choctaw. For Choctaw

to disclaim this documentary evidence, filed in the County Clerk's office is sheer mendacious fiction, which is the root of the "Bad-Faith Claim" against the Respondents.

All of these litigations, spawned by Choctaw, aided and abetted by OSDH, have been a fraud on both Petitioner and each court they have been in.

Background

In 1975, the City of Choctaw secretly and illegally dezoned Petitioner's commercial zoning of 150 acres of land (the Redwood Manors tract) back to residential on two occasions. The dezonings were done without proper notification or due process. The dezonings as well as the litigations of the sewage system were subterfuges to prevent this property from being developed for commercial, multifamily, or single

family use. It is an overt racketeering shakedown. Choctaw and its co-conspirator, OSDH, have deliberately kept this property under a no-development moratorium since 1972, in repeated violation of the Rico laws.

In 1978, Petitioner suffered a $250,000 sabotage of earth moving equipment that is connected to the "Choctaw Affair". (The said equipment was not insured.)

June 1980, (OSDH) held extensive hearings pursuant to the Oklahoma Administrative Procedures Act (OAPA), on the Redwood Manors sewer system which evolved into a scheme to ignore a written Agreement between the City, and the OSDH, and Pointon, (please note the fraud; the OSDH was both judge and party in interest) see pages 8 thru 13 in Appendix D, with the intent to stifle development and punitively force Pointon to remodel a good and

workable system. Also, as a by-product of the hearings, this inhouse court of the OSDH, canceled the 1962 large sewer lagoon system without a hearing. This large lagoon, also referred to as the west lagoon was fully constructed ready for use. The plan approved by the OSDH and the City of Choctaw as evinced by both entities signing the 1961 Sewer Agreement entitled Permit, was to run a line from the small 40 house lagoon (the source of this subterfuge litigation) to the large west lagoon system. To corroborate this see provision 6 in the "Permit" shown on page 12 of Appendix D herein.

This system was more than adequate to sewer a large number of housing units. <u>These hearings were a subterfuge for a moratorium to stifle development, shake down Pointon, and create a monopoly for the benefit of "Special Interest", the alter ego of</u>

Choctaw and the OSDH.

Choctaw and OSDH conspired and filed a suit for Judicial Review in the County District Court CJ-81-5741, under the unjurisdictional authority of the OAPA, asking the Court to modify the OSDH's Final Order and to mandate that Pointon remodel the system (owned by Choctaw) twenty years later from its properly built 1961 Standards to 1981 Standards. The County District Court without subject matter jurisdiction (under undue influence) granted every request asked by the Respondents against Pointon, except it left operation of the system with Choctaw.

Previous decisions, contrary to a preponderence of the exhibited documentary evidence, shown in the appendix, have favored a false sovereign immunity for these governmental entities, allowing them to run rogue over Petitioner and others in

similar situations, which entity heads are appointed and controlled by "Special Interests" who utterly monopolize real estate development in this area.

After fifteen years it is clear that OSDH in its hearings never had jurisdiction of Pointon because he didn't own the sewer works, hence he was not a Real-Party-In-Interest, didn't have jurisdiction of the City because the OAPA specifically states that: "This Act shall not apply to municipalities . . ." 75 O.S. 324; it does not have the jurisdiction to adjudicate property rights and does not have jurisdiction to void Agreements. The sewer Agreement was never voided, just ignored. The County District Court sitting as an appeals court could not have any more jurisdiction or powers than those granted to it in the OAPA which specifically denies its use against or by a city. Therefore,

there has never been any proper jurisdiction of Petitioner or the City by this Court. CJ-81-5741 was a fraudulent judgment at its inception.

A pattern emerged which was a design to ruin, bankrupt, shake down, fine, and extort from Pointon and judicially railroad him into a false imprisonment by the fraudulent use of the courts.

Because of the Choctaw Affair's continuous litigations and the moratorium enforced on his development, Petitioner was driven into bankruptcy. The Bankruptcy Court discharged Choctaw's fraudulent judgment.

Attempted Entrapment

Choctaw and OSDH next contrived a nefarious entrapment for Pointon: On or about May 1, 1991, Pointon received an anonymous phone call informing him that Choctaw and OSDH had layed false grounds

for a bench warrant for his arrest, fine, and imprisonment concerning the questioned sewage system. Respondents had secretly decided to file an "Application for Citation" in the old dormant false-judgment case, CJ 81-5741 in May of 1991, two years after Petitioner's bankruptcy discharge, then they would not have to notify Pointon with a summons, this was the first entrapment. Choctaw/OSDH in their "Certificate of Mailing" listed five fictitious addresses for Pointon in their "Application". The one correct address listed, they deliberately failed to mail him the "Application for Citation." The second entrapment was failure to inform Pointon of a later trial date. If their well laid entrapments had not been accidently foiled, Pointon would have been cited for contempt in absentia, and the conspirators would have had their fine and

incarceration they had so vainly sought. Fantastic? It is a matter of court record.

Since Respondent's "Application" violated the permanent injunction of Pointon's Bankruptcy Discharge, it was necessary to re-open his bankruptcy case.

The Bankruptcy Court ruled in three different Orders that the false judgment, CJ-81-5741 had been discharged.

The District Court sitting as an appeals court to the Bankruptcy Court said the controversy would have to be settled by an adversary suit filed in the Bankruptcy Court which was done. And again, the Court ruled and affirmed the Bankruptcy Discharge.

Then again, the Respondents in their relentless predatory pursuit of Pointon in their zeal to multiply proceedings and their attempt to collect an unlawful debt

in violation of Rico, 18 U.S.C. 1964, appealed the above decision to the United States District Court. They again ruled in favor of Pointon.

All of the litigation filed by the Respondents since their "Application for Citation" is in direct violation of the Bankruptcy Discharge Injunction, Sections 106 and 524 of the Code.

Respondents continue their brazen misrepresentation that Pointon is the owner of the sewer system.

There have been seven conveyances of ownership of the sewer system to Choctaw in compliance with the "Sewer Agreement" as clearly shown in an Affidavit pages i thru 34 in Appendix D showing documentary evidence of ownership. Further, any possible residue of ownership, if there was any, was listed in the Bankruptcy Petition and discharged, and further, any and all

conditions of Judgment Order CJ-81-5741 had expired under the Oklahoma State Dormant Judgment Statute 12 O.S. Sections 735 and 759 before the date of filing the "Application for Contempt."

Since the filing of Respondents' "Application for Citation for Contempt," Petitioner has incurred in excess of $33,000 in Attorney fees and costs along with a tremendous amount of paralegal time.

Irrefutable Facts

In addition to Petitioner's bankruptcy discharging all conditions of the questioned judgment order, the Respondents had absolutely no grounds for filing their "Application for Citation" because the June 7, 1984 Judgment Order of the Oklahoma County District Court, CJ 81-5741, was a dormant judgment. According to 12 O.S. Sections 735 and 759, it is a nullity. If five years have elapsed (May 28, 1991 date

of filing "Application for Citation) and judgment has not been renewed, it is cancelled automatically. Section 735 specifically states:

> "...any judgment now or may be rendered in any court of record in this state, ..."

12 O.S. Chapter 15, page 32, defines "Judgment" and "Final Order" as "synonymous." CJ-81-5741 was a modification of a Final Order. The Respondents failed to comply with the requirement of the statute.

The Respondents insolently committed continuous "Bad Faith" from the inception of all of this intertwined litigation.

This Court has inherent authority to severely sanction the renegade Respondents for "Bad Faith Fraud" perpetrated on the judicial system and Petitioner Pointon.

It is a fact that Petitioner's Affidavit with its documentary exhibits clearly and unequivocally show that Choctaw is the

record owner of the sewage system in question; and every time the Respondents disclaim Choctaw's ownership, they are violating "Rule 11 of F.R.C.P" by mendacious fabrications to the court and should be severely sanctioned.

This litigation for fifteen years, spawned by city of Choctaw and its city "Boss", was founded and prosecuted on a fabricated lie in their continuous allegations disclaiming ownership of the sewer system. The opposite to the truth is a lie. Their entire case was built on this fabrication to the courts. Choctaw aided and abetted by OSDH perpetrated a fraud on each court this case has been in and the actors should be severely punished.

On June 13, 1995 Choctaw mailed a "Brief" to be filed in the United States Supreme Court in opposition to Petitioner's improper "Notice of Appeal" to this court.

Counsel for Choctaw in his zeal for attorney's fees could not wait to see if and when Petitioner would file this "Petition For Certiorari". As usual, Respondents are unduly multiplying proceedings.

Also, in Choctaw's Brief they list a gaggle of inappropriate cases as if Choctaw was not the owner of the sewer system. There seems to be no end to Choctaw's pathological mistruths regarding documentary ownership of their sewer system.

REASON FOR GRANTING THE WRIT

The case at bar has many similarities to your recent landmark case: Chambers v. Nasco, Inc., 115 L. Ed 2d 27 (1991): Chambers, the owner of a television station entered contract for the sale of said station to Nasco, Inc. but Chambers later refused to consummate the sale. Subsequently Nasco sued for specific

performance of the agreement. Chambers and his attorneys engaged in protracted litigations and the Supreme Court on page 28 held that:

> "...a federal court has inherent power to assess attorneys' fees as a sanction for a party's bad-faith conduct in the course of litigation; ..."

Chambers, his attorneys, and other involved parties were assessed sanctions as follows, on page 31:

> "... (1) much of the party's bad-faith conduct is beyond the reach of the Rules, (2) the party's entire course of conduct throughout the lawsuit evidences bad faith and an attempt to perpetrate a fraud on the court, (3) the conduct sanctionable under the Rules is intertwined within conduct that only the inherent power can address, and (4) in circumstances in which all of a litigant's conduct is deemed sanctionable ..."

So --- in like manner the obstreperous Respondents in the case at bar have continuously lied to the court pertaining

to ownership of the sewer system and falsifying their cleanup-theory that the false Judgment Order did not say, which perpetrates a fraud on the court, and continue to violate and desecrate the Bankruptcy Code to this day.

On page 35, the court said:

> "... the assessment of attorneys' fees as a sanction for such misconduct are aimed at punishing not only the harm done to plaintiff, but also the harm done to the court itself."

The fifteen (15) years of litigation spawned and perpetrated by Respondents has been an unnecessary undue burden on the judicial system.

On pages 52 and 53 the court stated:

> "...full attorney's fees were warranted due to the frequency and severity of Chambers' abuses of the judicial system and the resulting need to ensure that such abuses were not repeated. Indeed, the court found Chambers' actions were part of a sordid scheme of deliberate misuse of the judicial process;

> designed to defeat Nasco's claim by harassment, repeated and endless delay, mountainous expense and waste of financial resources. It was within the court's discretion to vindicate itself and compensate Nasco by attorney's fees."

The foregoing appropriately describes and parallels the litigation with Respondents and Pointon in this case.

On page 42, Sanctions against Chambers in the form of attorney's fees and expenses totalled --- $996,644.65; attorney Gray was disbarred for three years; attorney Richard A. Curry was suspended from practice for six months; and attorney McCabe was suspended for five years.

The court further said on page 37:

> "Federal courts have the inherent power to manage their own proceedings and to control the conduct to appear before them . . . when the party practices a fraud upon the Court, Universal Oil Products Co. v Root Refining Co., 32 8 US 575, 580, 90 L Ed 1447, 66 S Ct 1176, or delays or disrupts the

> litigation or hampers a court's enforcement, Hutto v Fionney, 437 US 678, 689, 57 L Ed 2d 522, 98 S Ct. 2565."

Just as the Respondents' conduct by their three years of continuous attack on Petitioner's Bankruptcy Discharge.

The Court ended its Opinion in the Chambers case by stating on page 53:

> "... the court specifically held that 'the extraordinary amount of costs and expenses expended in this proceeding were caused not by lack of diligence or any delays in the trial of this matter by NASCO's counsel or the Court, but solely by the relentless, repeated fraudulent and brazenly unethical efforts of Chambers' and the others..."

The above quoted paragraph adequately describes the Respondents actions against Petitioner Pointon.

In Re Kiker, 98 B.R. 103 (ND of Ga. 1988) the court held:

> "... that repeated attempts by IRS to assess and collect discharged tax claims from debtors, in violation of permanent

> injunction, warranted finding civil contempt and award to debtors of their attorney fees and related costs."

Another action with similarities to the case at bar was, In Re Myers, 18 B.R. 362 (1962). The creditor Beneficial Finance Co. filed a warrant in detinue against debtor in state court. The court ruled:

> "...that creditor wilfully violated discharge injunction and would be fined $10,000, for contempt."

This was 33 years ago, a comparable fine today would be several times more than this amount.

Sanctions

This Court should invoke severe sanctions against the perpetrators of this dubious affair, City Attorney Ted N. Pool, his law partner, Robert Thompson, and City of Choctaw, and OSDH, and the Oklahoma County District Attorney, Bob Macey,

representing OSDH.

The amount of legal fees and costs expended by Petitioner since Respondents filed their "Application for Citation," greatly exceed $33,000. Petitioner requests that this Court award his legal fees and in addition award multiple compensatory damages based on Petitioner's spent legal fees.

Respondents at all times since the filing of their "Application for Citation" have been in perpetual violation of the Bankruptcy Discharge Injunction of Petitioner Pointon.

Congress did not pass the Bankruptcy laws with its permanent Injunction only to have them blatantly violated and desecrated by a three year assault by Respondents.

Petitioner requests that this Court cite the above actors sua sponte.

EXTORTIONIST SHAKEDOWN

On April 6, 1993 Petitioner's attorney received a phone call from attorney Bob Thompson, law partner to Ted Pool, Choctaw City Attorney, offering to settle this endless litigation if Petitioner would give -- free gratis -- a water works to Choctaw; then the City would quit disclaiming ownership of their sewer system. See copy of letter from Petitioner's attorney in Appendix E.

Next, on January 10, 1994 the City Manager of Choctaw sent a letter to Petitioner's attorney offering to settle: he insinuates that if Petitioner would give the water works to the City that maybe -- it is unclear -- that Choctaw would quit disclaiming ownership of their sewer system. Then as a sop, the City offered to return (10) acres of commercial zoning of the 150 acres commercial zoning that

Choctaw clandestinely and fraudulently had dezoned on two previous occasions. See copy of letter in Appendix F.

Unanswered questions: Would Choctaw again dezone this (10) acres and would there still remain a building moratorium? There is no sewer capacity since Choctaw and OSDH in their "surprise" in this litigation, had the court cancel the 200 house capacity large unused sewer system without a reason, except to stifle and shake down Petitioner. This offer promises more shakedown by Choctaw. Petitioner no longer owns the development property.

Petitioner urges this Supreme Court to invoke its inherent powers on its own initiative and sanction Choctaw, its attorneys, the OSDH and its attorneys; to remand this case to the trial court would only play into the hands of Choctaw's attorneys and would add to the fifteen (15)

years of endless litigation. It is within this court's power to grant justice right here and now.

CONCLUSION

City of Choctaw and its officials, and OSDH and its officials, were participants to the sewer Agreement; they knew of the Bond Prospectus naming Choctaw as owner of the sewer system which was collateral for the bonds, see page 14 of Appendix D; they knew of the conveyances of the sewer system to Choctaw; they knew that they did not have valid jurisdiction of Pointon; they knew that Pointon's Bankruptcy Discharge discharged their false judgment; they knew that their witchburning "Application for Citation" of fine and imprisonment for Pointon was a railroad action; they knew that they were using the courts for extortion to collect an unlawful debt. In all of the foregoing, the Respondents

committed fraud with intentional malice to the detriment of Pointon and the courts.

This litigation spawned by City of Choctaw and its officials and City Attorney contains several prongs: 1. It is an extortionist shakedown; 2. To prevent the development of the Redwood Manors tract which petitioner no longer owns; 3. To run Pointon into bankruptcy and out of business, which they did; 4. So that "Special Interest" can monopolize real estate development in the area; 5. So City attorney Pool and Thompson can bleed Choctaw for attorney fees by churning this litigation indefinitely. Attorney Pool is the "Boss" of the City of Choctaw. Since he has been City Attorney (some 22 years) councilmen come and go, but he stays forever running the city.

This is not a fine-line case. The preponderance of the documentary evidence

proves beyond a shadow of doubt that Choctaw is the undisputed owner of the sewer system, that Choctaw's 1984 judgment was fraudulent from its inception, then after driving Petitioner into the bankruptcy court, their fraudulent judgment was again discharged by the Bankruptcy Court as well as the Oklahoma State Dormant Judgment Statute, that the three years of persistent predatory litigations beginning with Respondents filing of their "Application for Citation" was a concerted attempt to use the courts to railroad Pointon into prison which constituted a malicious violation of the "Bad-Faith Doctrine" and a direct violation of the permanent injunction of the Bankruptcy Code.

These covert acts were designed to use governmental treasuries, city and state, for payment of attorneys' fees to institute

endless litigations since 1980 to ruin, bankrupt, and shake down, fine and incarcerate Petitioner, such as their recent Brief to this Court.

For fifteen (15) years, the unssavory Respondents have reaped unjust enrichments by the use of unlimited funds to apply a throttle-hold on Petitioner to his business and to his person, rendering him helpless.

If not the helpless, who should the law protect?

The bombing of April 19th proves that corruption is rife in the Oklahoma City Area. City of Choctaw is a suburb of Oklahoma City.

For the reasons set forth above, a Writ of Certiorari should issue to review the Judgment and Opinion of the Court of

Appeals in this matter.[1]

Petitioner prays for relief according to the foregoing.

DATED: July 21, 1995.

Respectfully submitted,

William Patrick Pointon, Jr.

William Patrick Pointon, Jr.
pro se
P.O. Box 308
Seminole, OK 74868
(405) 382-4007

Petitioner requests oral argument. This interwoven case comprises (15) years of fraud on the judicial system, corruption in the Oklahoma City area, plus death threats.

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[1] If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals in Banc for redetermination in light of this Court's opinions in Chambers, supra.

AFFIDAVIT

State of Oklahoma]
] SS:
County of Oklahoma]

I, William Patrick Pointon, Jr., 71 years of age, of sound mind, being duly sworn upon oath, do hereby aver:

1. That the statements in this foregoing Petition are true;

2. That the exhibits in the appendices are true replicas of copies that were filed in various courts, most long before Respondents "brainstorm" to file their ill-founded "Application for Citation", (their attempt to railroad Petitioner into prison based on a fraudulent, expired bankruptcy discharged judgment).

Accordingly, Affiant prays for justice and sanctions against Respondents after fifteen (15) years of malicious prosecution.

Further Affiant sayeth not.

William Patrick Pointon Jr
William Patrick Pointon, Jr.

Subscribed and sworn to before me this 21 day of July, 1995.

Tammy Hurst
Notary Public

My Commission Expires:

5-4-99

AFFIDAVIT OF SERVICE

STATE OF OKLAHOMA, COUNTY OF SEMINOLE, SS:

I, William Patrick Pointon, Jr., depose and say that I am attorney pro se herein being duly sworn, states: that forty copies of the Petition For Writ of Certiorari addressed to the Clerk of the U.S. Supreme Court, Washington, D.C. 20543; and one copy each for the following: Ted Pool for City of Choctaw, 511 Couch Dr. Suite 300, Oklahoma City, OK 73102; Gretchen Crawford, Asst. Dist. Attorney for OSDH, 505 County Office Building, 320 Robert S. Kerr, Oklahoma City, OK 73102; Oklahoma State Attorney General, State Capitol Building, Okla. City, OK; Office of the Clerk for the United States Court of Appeals Tenth Circuit, United States Courthouse, 1823 Stout St., Denver, Colo. 80257; were all deposited in a U.S. Post Office July 28

1995, first class postage paid, to each of the above parties.
All Parties required to be served have been served.

William Patrick Pointon, Jr.
William Patrick Pointon, Jr., pro se

Subscribed and sworn before me on July 28, 1995.

Tammy Hunt
Notary Public

My Commission Expires:

5-4-99

INDEX TO APPENDICES

Appendix A	Opinion of the Court of Appeals in Banc on May 2, 1995.
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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re: WILLIAM PATRICK POINTON, JR.,
Debtor.

WILLIAM PATRICK POINTON, JR.,
Plaintiff-Appellant,

v.

CITY OF CHOCTAW, OKLAHOMA; STATE OF OKLAHOMA, ex rel. Oklahoma State Department of Health,
Defendants-Appellees.

No. 94-7053
(Filed U.S. Ct. of App. 10th Cir. May 2, 1995)

ORDER

Before ANDERSON, BALDOCK, and BRORBY, Circuit Judges.

This matter is before the court on appellant's petition for rehearing with suggestion for rehearing in banc.

The materials submitted by appellant have been reviewed by the members of the hearing panel, who conclude that the original disposition was correct.

Appendix A

Accordingly, the petition is denied on the merits.

The petition having been denied on the merits by the panel to which the case was submitted, the suggestion for rehearing in banc was transmitted to all the judges of the court in regular active service in accordance with Rule 35 (b) of the Federal Rules of Appellate Procedure. No member of the hearing panel and no judge in regular active service on the court having requested that the court be polled on rehearing in banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing in banc is denied.

Entered for the Court
Patrick Fisher, Clerk

By (L Bahzano)
Deputy Clerk

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Appendix B

In re: WILLIAM PATRICK POINTON, JR.,
Debtor.

WILLIAM PATRICK POINTON, JR.,
Plaintiff-Appellant,

v.

CITY OF CHOCTAW, OKLAHOMA; STATE OF OKLAHOMA, ex rel. Oklahoma State Department of Health,
Defendants-Appellees.

No. 94-7053
(Filed U.S. Ct. of App. 10th Cir. May 2, 1995)

ORDER AND JUDGMENT[2]

Before ANDERSON, BALDOCK, and BRORBY, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34 (a); 10th

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[2] This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The Court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the court's General Order filed November 29, 1993. 151 F.R.D. 470.

Cir R. 34.1.9. The case is therefore ordered submitted without oral argument.

This dispute revolves around a sewer lagoon that appellant William Patrick Pointon, Jr. built for a subdivision in Choctaw, Oklahoma, in 1961. In 1984, appellees City of Choctaw (City) and Oklahoma State Department of Health (OSDH) obtained a state court judgment against Pointon (the 1984 order). This judgment required Pointon to undertake certain work on the lagoon and, thus, was in the nature of injunctive relief, not damages. Pointon took no steps to comply wilth the 1984 order. Pointon filed bankruptcy in 1989 and was granted a general discharge under Chapter 7. Although both the City and OSDH were listed as judgment creditors on Pointon's bankruptcy schedules and received proper notice of the proceeding, neither objected to the discharge of the 1984 order

in Pointon's bankruptcy. In 1991, they attempted to enforce the 1984 order through a state court contempt proceeding. Pointon obtained a stay in the state court and, after some proceedings in the bankruptcy court not relevant to this appeal, he filed an adversary proceeding, seeking a declaratory judgment that the 1984 order represented a dischargeable and discharged debt. Pointon moved for summary judgment and appellees responded. The bankruptcy court granted summary judgment to Pointon, holding that the 1984 order was a dischargeable debt that was, in fact, discharged. The City and OSDH appealed from the grant of summary judgment to the district court, which ruled in favor of Pointon.

Pointon then filed in the district court a motion for attorney's fees, sanctions, and a contempt citation under 28

U.S.C. sec. 1927, Fed R. Civ. P. 11, and E.D. Okla. R. 6, arguing that appellees should not have pursued enforcement of the 1984 order in the face of his discharge in bankruptcy. The district court denied relief in a minute order, stating that it could not find that their appeal was "frivolous, vexatious or in bad faith." R. doc. 10. Pointon appeals from the denial of attorney's fees.[1] We have jurisdiction under 28 U.S.C. sections 158 (d) and 1291.[2] We review the district court's denial of attorney's fees for abuse of discretion.

---

[1] Pointon also seeks sanctions against his former attorney for "improperly" filing the motion for fees in the district court rather than the bankruptcy court. A motion for attorney's fees on appeal is properly filed in a district court sitting as an appellate court. See Morris ex rel Rector v. Peterson, 871 F.2d 948, 951 (10th Cir. 1989). Therefore, the request for sanctions is denied without further discussion.

[2] The City and OSDH argue that Pointon's notice of appeal was untimely. Pointon demonstrated with a postal receipt, however, that the court timely received the notice of appeal several days before it was stamped "filed". We conclude that Pointon timely filed the notice of appeal.

See Continental Trend Resources, Inc. v. OXY USA Inc., 44 F. 3d 1465, 1483 (10th Cir. 1995).

Appellees argued on appeal to the district court that the 1984 order could not properly have been discharged because it was not a "claim" within the meaning of the Bankruptcy Code. See 11 U.S.C. sec. 101(5) (B). Whether an order for injunctive relief is a claim within the meaning of the Bankrukptcy Code is a debatable question. See United States v. The LTV Corp. (In re Chateaugay Corp.), 944 F.2d 997, 1008 (2d Cir. 1991) discussing types of injunctions that do or do not constitute a "claim" under 11 U.S.C. sec. 101(4)(B) now Sec. 101(5) (B). In addition, appellees' argument was invited by Pointon, who raised the issue of dischargeability in his declaratory judgment action. Cf. United States v.

Burson, 952 F.2d 1196, 1203 (10th Cir. 1991) holding that invited error doctrine "prevents a party who induces an erroneous ruling from being able to have it set aside on appeal"), cert. denied, 112 S. Ct 1702 (1992). Therefore, we cannot find that the district court abused its discretion in holding that the appeal to that court was not frivolous, vexatious, or in bad faith.

The judgment of the United States District Court for the Eastern District of Oklahoma is affirmed. The mandate shall issue forthwith.

Entered for the Court
Stephen H. Anderson
Circuit Judge

Appendix C

United States District Court

for the Eastern District of Oklahoma

March 1, 1994

Ed Cadenhead, Esq.

Appendix C

P.O. Box 2067
221 E. Evans
Seminole, OK 74818-2067

CIVIL MINUTES

6:93-cv-00545 Choctaw OK City of v. Pointon

DOCKET ENTRY

MINUTE ORDER; denying appellant's Motion for attorney fees [7-1], denying motion for sanction [7-2], denying motion for contempt citation [7-3] for the reason the Court cannot find that this Appeal was frivolous, vexatious or in bad faith. (FHS) (cc: all counsel)

WILLIAM B. GUTHRIE, Clerk

By: s/ Pamela L. Weeks
Deputy Clerk

cc: Robert Thompson
Ted Pool
K. Duncan
Ed Cadenhead

Appendix D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

CITY OF CHOCTAW, and STATE OF OKLAHOMA ex rel State Dept. of Health,
Apellants,
v.
WILLILAM PATRICK POINTON, JR.
Appellee,

Appendix D

Case No. CIV-93-545-S

On appeal from the United States Bankruptcy Court for the Eastern District of Oklahoma Case No. 92-70729, Chapter 7 Adversary 93-7008

FILED Sep. 20 1993

AFFIDAVIT OF WILLIAM PATRICK POINTON, JR.

STATE OF OKLAHOMA]
] SS:
COUNTY OF SEMINOLE]

I, William Patrick Pointon, Jr., of lawful age, and being duly sworn upon oath, do hereby aver as follows:

I, William Patrick Pointon, Jr., am the Debtor/Appellee in case on appeal from the United States Bankrukptcy Court for the Eastern District of Oklahoma Case No. 92-70729, Chapter 7 Adversary 93-7008. I am 69 years of age and I am a semi-retired small-businessman. I live at 220 East Oak, apartment 224, Seminole, Oklahoma. In support of my position, I hereby summarize the facts of the case.

BACKGROUND OF THE CASE

In 1980, the Oklahoma State Department of Health ("OSDH") filed an administrative action against the City of Choctaw ("Choctaw") and affiant (as developer of the subject housing addition) because Choctaw would not operate its sewer system. Choctaw's refusal to operate the sewer system resulted in a moratorium on the development of affiant's addition. Since affiant no longer owned the sewer system, having conveyed it after construction to Choctaw, he was not a real party-in-interest. The Final Order of the OSDH ordered Choctaw to operate and maintain its sewer system, which Order is still in effect. But Choctaw has steadfastly refused to do so up to this date.

Choctaw appealed the OSDH's Final Order to the County District Court. At this juncture, the OSDH changed its

position and joined Choctaw against affiant. This thirteen (13) years of groundless litigation has been an undue burden on the courts and is a textbook case of abusing the legal system. Even after forcing affiant into bankruptcy, Appellants filed an "Application for Citation for Contempt" seeking "fines and imprisonment" for a judgment discharged in the Bankruptcy Court.

Appellants enjoy claiming that Appellee is the owner of the sewer system lagoon. They base this "conclusion" on the single line from the State District Court Order that refers to Appellee as the owner of the system. It is clear, however, that the Court made no finding and entered no Order establishing title to property. The Court made no inquiry into ownership of the system. There have been several conveyances of ownership of the sewer

system to Choctaw, a published approval and acceptance, and a Final Disclaimer, as demonstrated by the evidence entered in this case, to-wit:

No. 1. Dedication and acceptance in the Plat recorded in the County Clerk's office.

No. 2. Sewer Application and Permit, a binding agreement, see pages 8 thru 13 of Appendix D.

No. 3. Prospectus, reference of Approval and Acceptance, see pages 14 thru 16 of Appendix D.

No. 4. 1979 Easement re-conveyance, see pages 17 thru 19 of Appendix D.

No. 5. 1980 Easement re-conveyance, see pages 20 thru 28 of Appendix D.

No. 6. Affidavit of Choctaw councilman, see pages 29 and 30 of Appendix D.

No. 7. Final Disclaimer in the Bankruptcy schedules, see pages 31 thru 34 of Appendix D.

The above instruments are all public documents and show that ownership of the sewer system clearly and indisputably vests in Choctaw, as required by the OSDH as

stated in the sewer permit application, and has for the past thirty-three (33) years. Choctaw cannot explain away these documents, they are replete. Choctaw has no evidence. Choctaw has never presented one shred of evidence showilng that they did not own the sewer system, or that they were not ordered to operate the system, not one.

The Appellants' allegations do not constitute evidence. This thirteen (13) years of protracted litigation has been an exercise of malicious prosecution, and abuse of the legal process.

The preponderance of the evidence points one way and one way only. Appellee therefore requests an Order instructing the Bankruptcy Court to:

1. Award attorney fees and costs for violation of Appellee's Bankrukptcy Discharge Order, as Appellee has been

relentlessly prosecuted by Appellants with virtually unlimited resources;

2. Find Appellants in contempt for willfully and wantonly, with malice, violating Appellee's Bankruptcy Discharge Order by seeking contempt charges for "fine and imprisonment" in the State Court;

3. Find Appellant's continuous litigation to be frivolous and that Appellants be permanently enjoined from further litigation with affiant in connection with the sewer system since Appellee no longer owns the system and has no responsibility for its operation and maintenance;

4. Find that the preponderance of the documentary evidence shows ownership of the sewer system clearly is vested in Choctaw;

5. Find that the preponderance of the documentary evidence clearly reveals that Appellee is not the owner of the sewer

system;

6. Assess sanctions against Appellants for prosecuting and continuing this litigation in violation of the Bankruptcy Discharge.

Accordingly, Affiant prays for justice and sanctions against Appellants after thirteen (13) years of malicious prosecution.

Further affiant sayeth not.

s/WILLIAM PATRICK POINTON, JR.

Subscribed and sworn to before me this 17th day of September, 1993.

s/NOTARY PUBLIC

My Commission Expires:

12-9-93

ELSENER & CADENHEAD
By ED CADENHEAD, OBA #1413
Attorneys at Law
P.O. Box 2067
Seminole, OK 74818--2067

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of September, 1993, a true and correct copy of the within and foregoing Affidavit was mailed by First Class Mail, postage fully prepaid, to the following: Robert C. Thompson; Pool, Thompson, Blankenship & Vincent, Suite 202, 511 Couch Drive, Oklahoma City, OK 73102; K. Duncan, Asst. Dist. Att., Oklahoma County Courthouse 320 Bobert S. Kerr Avenue, Oklahoma City, OK 73102

s/ED CADENHEAD

APPLICATION FOR PERMIT

TO THE OKLAHOMA STATE DEPARTMENT OF HEALTH

OKLAHOMA CITY, OKLAHOMA

Date 7/26/61

Sir:

The Town of Choctaw, proposes the construction of Sanitary Sewers & Temporary lagoon To Serve Pointon Redwood Manor Addn. and, as required by Title 63, Sections 613, 614 and 615, Oklahoma Statutes 1941, hereby makes application to the State Department of Health for approval of plans and for permit to proceed with this work. Plans and specifications in duplicate, together with a copy of the engineer's report of the proposed installation, accompany this application,

IMPORANT: These plans and specifications have been approved by the proper city officials and a letter signed by the consulting engineer is in our files stating that all pertinent information affecting the

BEST AVAILA

project is presented in the engineering report, plans and specifications accompanying this application.

It is proposed to let contracts about,

Near future.

Total estimated cost of this project is

16,586.90.

Remarks: THE SEWER SYSTEM IS TO BE CONSTRUCTED BY THE DEVELOPER AND GIVEN TO THE TOWN OF CHOCTAW.

(H.L. Townsend)
Mayor or Chairman of Board

ODH FORM NO. 534

Certified: James Patterson, Okl. Supreme Ct. Clerk, 3-9-87, instrument filed 10-27-86.

LABLE COPY

(Great seal of the State of Oklahoma)

PERMIT

OKLAHOMA STATE DEPARTMENT OF HEALTH
OKLAHOMA CITY 5,OKLAHOMA

Page 1 of 2 pages. Date August 11, 1961.

The Town of Choctaw, Oklahoma having complied with the requirements of the law is hereby granted permission to construct a sanitary sewage system to serve REDWOOD MANOR ADDITION to Choctaw, Oklahoma, to be constructed in accordance with the plans and specifications approved by this Department on August 10, 1961, subject to the following provisions

1) That all details relative to the project not covered in the plans and specifications as approved will be constructed and accomplished in accordance with good public health practice.

2) That the recipient of the permit is re-

sponsible that the project receive supervision and inspection by competent and qualified personnel.

3) That any notation or changes recorded on the official approved set of plans and specifications in the State Department of health files shall be a part of the plans as approved.

4) That this office will be notified approximately ten days prior to completion of the project so that a final inspection can be made by an Engineer from this Department before final payment is made to the contractor.

5) That the issuing of this permit does not relieve the responsible parties from any damage which may occure as the result of the location and operation of the plant in this area.

(Great seal of the State of Oklahoma)

PERMIT

OKLAHOMA STATE DEPARTMENT OF HEALTH
OKLAHOMA CITY 5, OKLAHOMA

Pages 2 of 2 pages. Date August 11, 1961.

The town of Choctaw, Oklahoma having complied with the requirements of the law is hereby granted permission to construct a sanitary sewage system to serve REDWOOD MANOR ADDITION to Choctaw, Oklahoma, to be constructed in accordance with the plans and specifications approved by this Department on August 10, 1961, subject to the following provisions:

6) That the total number of homes connected to the temporary lagoon shall not exceed forty (40), after which the lagoon will be moved to a new location on the west side of the development.

7) That no house will be built on the lots on the South side of Regency Street until the temporary lagoon has been moved.

Kieth L. Morley)
Commissioner of Health

Loyd Trummill)
State Sanitary Engineer

Certified: James Patterson, Okl. Supreme Ct. Clerk, 3-9-87, instrument filed 10-27-86.

THE CHOCTAW UTILITIES AUTHORITY

FIRST MORTGAGE REVENUE BONDS

Dated: December 1, 1961

Principal and semi-annual interest (June 1 and December 1) payable at The Lilberaty National Bank and Trust Company of Oklahoma City, Oklahoma, or at the Oklahoma Fiscal Agency, New York City. First coupon due June 1, 1962. . . .

Engineering Report cont.

Since the original engineering report was made there have been 160 acres of ground platted outside of the old original town. This development is known as the Redwood Manor Addition. In this addition, the Developer has constructed a sewer system including sewer lines and treatment facilities to serve 40 building sites. This facility has been approved by the State Health Department and accepted by the Town of Choctaw City. . . .

IN WITNESS WHEREOF, the Town of Choctaw City, in Oklahoma County, Oklahoma, a Municipal Corporation, by the President of its Board of Trustees, as LESSOR, and the Trustees of THE CHOCTAW UTILITIES AUTHORITY, the LESSEE, have hereunto set our hands, executing and delivering this LEASE AGREEMENT in multiple originals, all of which constitute one and the same instrument all on this 5th day of December, 1961, to be effective as of the 1st of December, 1961.

THE TOWN OF CHOCTAW CITY, OKLAHOMA
By /s/ H.L. Townsend
President, Board of Trustees
Attest:
/s/ George B. Robertson
Town Clerk

THE CHOCTAW UTILITILES AUTHORITY
By /s/ H.L. Townsend
Attest:
/s/ Jack I. Denley
Secretary of Trustees

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

Before me, the undersigned Notary Public within and for the above named State and County on this 5th day of December, 1961, personally appeared H.L. Townsend, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same in his capacity as President of the Board of Trustees of said Town, pursuant to the directions of duly enacted and approved ordinance of said Town, as his free and voluntary act and deed, and as the free and voluntary act and deed of the Town of Choctaw City, Oklahoma, a Municipal Corporation, for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year above written.

/s/ Helen C. Getsy
NOTARY PUBLIC
My Commission Expires: July 14, 1964

(Filed in the County Clerk's office, July 18, 1979 in Book 4586, page 1646)

ASSIGNMENT OF EASEMENT

KNOW ALL PEOPLE BY THESE PRESENTS:

That Private Roads Inc., party of the first part, in consideration of the sum of One Dollar (1.00) or other good and valuable consideration the receipt of which is hereby acknowledged, does hereby for itself, its heirs, executors, adminis-

trators, Trustees and assigns grant and convey to the City of Choctaw, Oklahoma party of the second part, an easement over, across and upon the following described property situated in Oklahoma County, State of Oklahoma, to-wit:

A tract of land in the Southeast Quarter (SE 1/4) of Section 5, Township 11 North, Range 1 West described as follows: Beginning at the Southeast Corner of Lot 1, Block 8, Pointon's Redwood Manor Addition to Choctaw City, Oklahoma County, Oklahoma, as shown on the recorded plat thereof; thence South and parallel with the West line of the section line road, a distance of 230 feet; thence West and parallel with the South line of said Block 8 a distance of 230 feet; thence North and parallel with the West line of said section line road a distance of 230 feet to the South line of said Block 8, thence East along the South line of said Block 8, a distance of 230 feet to the point of beginning. Less and except all the minerals. And Lots 1 thru 5 inclusive, Block 8, Pointon's Redwood Manors Addition in Choctaw, Oklahoma, as shown on the recorded plat thereof. Less and except all the minerals;

With right of ingress to and from the same for the purpose of use as a sewer lagoon and for use as a place for disposal of raw

sewage and which use and occupancy shall be in strict conformity to the laws of the State of Oklahoma and the rules and regulations of the Health Department of the State of Oklahoma in accordance to a Sewer System Permit issued to the City of Choctaw on August 10, 1961.

The grantee herein and hereby assumes all obligations and all liabilities in connection with the operation of the sewer lagoon and sewage disposal unit and for the use of said property for said purposes and any other purposes, and agrees to pay all ad valorem taxes and special assesments. This easement shall continue so long as the property included herein is used as a sewer lagoon after which it will cease and come to an end.

Dated at Oklahoma City, Oklahoma, this 16th day of July, 1979.

PRIVATE ROADS, INC.
By /s/ W. P. Pointon, Jr., Pres.
Attest: /s/ John P. Pointon, Sec.

STATE OF OKLAHOMA) SS:
COUNTY OF OKLAHOMA)
Before me, the undersigned, a Notary Public in and for said County and State, on the 10th day of July, 1979, personally appeared W. P. Pointon, Jr., to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

/s/ Reba Mae Doull
NOTARY PUBLIC
My Commission Expires: Feb. 18, 1981

(Filed in the County Clerks's office October 21, 1980 in Book 4714 Page 189)

ASSIGNMENT OF EASEMENT

(To clarify easement filed in Book 4586 Page 1646 of the records in Oklahoma County, Oklahoma).

KNOW ALL MEN BY THESE PRESENTS:

That Private Roads Inc., party of the first part, in consideration of the sum of

One Dollar (1.00) or other good and valuable consideration the receipt of which is hereby acknowledged, does hereby for itself, its heirs, executors, administrators, trustees and assigns does hereby grant and convey to the City of Choctaw, Oklahoma, party of the second part, an easement over, across and upon the following described property situated in Oklahoma County, State of Oklahoma, to-wit:

A tract of land in the Southeast Quarter (SE 1/4) of Section 5, Township 11 North, Range 1 West described as follows: Beginning at the Southeast Corner of Lot 1, Block 5, Pointon's Redwood Manor Addition to Choctaw City, Oklahoma, as shown on the recorded plat thereof: thence South and parallel with the West line of the section line road, a distance of 230 feet; thence West and parallel with the South line of said Block 8 a distance of 230 feet; thence North and parallel with the West line of said section line road a distance of 230 feet to the South line of said Block 8; thence East along the South line of said Block 8, a distance of 230 feet to the point of beginning. Less and except all of the minerals.

All of the foregoing with all

improvements thereon and all the "Dominant Easements" and apurtenances thereunto belonging (EXCEPT mineral rights, servient easements and/or restrictions of record, the same being expressly excluded from the grant hereof). With right of ingress to and from the same for the purpose of use as a sewer lagoon and for use as a place for disposal of raw sewage and which use and occupancy shall be in strict conformity to the laws of the State of Oklahoma and rules and regulations of the Health Department of the State of Oklahoma in accordance to a sewer system permit issued to the City of Choctaw on the: "APPLICATION FOR PERMIT" dated 7-26-61 and "PERMIT" dated August 11th, 1961 which are attached hereto and made a part hereof.

The "CITY" of Choctaw herein and hereby assumes all obligations and all liabilities in connection with the

operation of the sewer lagoon and sewage disposal unit and for the use of said property for said purposes, and agrees to pay all ad valoreum taxes and special assesments that might arise.

This easement shall continue so long as the property included herein is used as a sewer lagoon after which it will cease and come to an end.

Dated at Choctaw, Oklahoma, this 28th day of May, 1980.

PRIVATE ROADS, INC.
by: /s/ W. P. Pointon, Jr., Pres.
Attest: /s/ John P. Pointon, Sec.

STATE OF OKLAHOMA) SS:
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public in and for said County and State, on the 28th day of May, 1980, personally appeared W. P. Pointon, Jr., to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

/s/ Reba Mae Doull

NOTARY PUBLILC

My Commission Expires: Feb 18, 1981

APPLICATION FOR PERMIT

TO THE OKLAHOMA STATE DEPARTMENT OF HEALTH

OKLAHOMA CITY, OKLAHOMA

Date 7/26/61

Sir:

The Town of Choctaw, proposes the construction of Sanitary Sewers & Temporary lagoon To Serve Pointon Redwood Manor Addn. and, as required by Title 63, Sections 613, 614 and 615, Oklahoma Statutes 1941, hereby makes application to the State Department of Health for approval of plans and for permit to proceed with this work. Plans and specifications in duplicate, together with a copy of the engineer's report of the proposed installation, accompany this application,

IMPORANT: These plans and specifications have been approved by the proper city officials and a letter signed by the consulting engineer is in our files stating that all pertinent information affecting the

project is presented in the engineering report, plans and specifications accompanying this application.

It is proposed to let contracts about,

Near future.

Total estimated cost of this project is

16,586.90.

Remarks: THE SEWER SYSTEM IS TO BE CONSTRUCTED BY THE DEVELOPER AND GIVEN TO THE TOWN OF CHOCTAW.

(H.L. Townsend)
Mayor or Chairman of Board

ODH FORM NO. 534

Certified: James Patterson, Okl. Supreme Ct. Clerk, 3-9-87, instrument filed 10-27-86.

(Great seal of the State of Oklahoma)

PERMIT

OKLAHOMA STATE DEPARTMENT OF HEALTH
OKLAHOMA CITY 5, OKLAHOMA

Page 1 of 2 pages. Date August 11, 1961.

The Town of Choctaw, Oklahoma having complied with the requirements of the law is hereby granted permission to construct a sanitary sewage system to serve REDWOOD MANOR ADDITION to Choctaw, Oklahoma, to be constructed in accordance with the plans and specifications approved by this Department on August 10, 1961, subject to the following provisions

1) That all details relative to the project not covered in the plans and specifications as approved will be constructed and accomplished in accordance with good public health practice.

2) That the recipient of the permit is re-

sponsible that the project receive supervision and inspection by competent and qualified personnel.

3) That any notation or changes recorded on the official approved set of plans and specifications in the State Department of health files shall be a part of the plans as approved.

4) That this office will be notified approximately ten days prior to completion of the project so that a final inspection can be made by an Engineer from this Department before final payment is made to the contractor.

5) That the issuing of this permit does not relieve the responsible parties from any damage which may occure as the result of the location and operation of the plant in this area.

(Great seal of the State of Oklahoma)

PERMIT

OKLAHOMA STATE DEPARTMENT OF HEALTH
OKLAHOMA CITY 5, OKLAHOMA

Pages 2 of 2 pages. Date August 11, 1961.

The town of Choctaw, Oklahoma having complied with the requirements of the law is hereby granted permission to construct a sanitary sewage system to serve REDWOOD MANOR ADDITION to Choctaw, Oklahoma, to be constructed in accordance with the plans and specifications approved by this Department on August 10, 1961, subject to the following provisions:

6) That the total number of homes connected to the temporary lagoon shall not exceed forty (40), after which the lagoon will be moved to a new location on the west side of the development.

7) That no house will be built on the lots on the South side of Regency Street until the temporary lagoon has been moved.

Kieth L. Morley)
Commissioner of Health

Loyd Trummill)
State Sanitary Engineer

Certified: James Patterson, Okl. Supreme Ct. Clerk, 3-9-87, instrument filed 10-27-86.

AFFIDAVIT OF L. G. JOHNSTON

STATE OF OKLAHOMA, COUNTY OF OKLAHOMA: ss:

I, L. G. Johnston, of lawful age, being first duly sworn, deposes and says as follows: That I served on the Choctaw Planning Commission from 1967 to 1971, then again from 1977 until 1979 and on the City council from 1971 until 1976. During this time the City was aware of the State Health Department Permit for the sewer system at Pointon's Redwood Manors Addition was made to the City of Choctaw. AS long as Mr. Pointon took care of this system, we just let him. We did not exercise our responsibility to maintain and operate the system. We had discused informally about some day purchasing his water system but we knew the sewer system belonged to the City of Choctaw.

(L.G. Johnston)

Subscribed and sworn ot before me this

20th day of November, 1981

Reba Mae Doull, Notary Public

My Commission expires Feb. 18, 1985

STATE OF OKLAHOMA, COUNTY OF OKLAHOMA,ss:

Before me, the undersigned a Notary Public in and for said County and State on this 20th day of November, 1981 personally appeared L. G. Johnston to me known to be the identical person who executed the with in and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for uses and purposes therin set forth.

Given under my hand and seal of office the day and year last above written.

My Commission expires Feb 18, 1985,

Reba Mae Doull, Notary Public.

Certified: James Patterson, Okl. Supreme ct. Clerk 3-9-87, instrument filed 10-27-86.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS

07/06/89
William Patrick Pointon, Jr.
Case Number: 89-20411
(Filed in the Oklahoma District Court Sep. 13, 1990)

DISCHARGE ORDER

It appearing that the person(s) named above has filed a petition commencing a case under Title 11, United States Code, that an order for relief was entered under Chapter 7 and that no complaint objecting to the discharge of the debtor(s) was filed within the time fixed by the court [or that a complaint objecting to discharge of the debtor(s) was filed, and after due notice and hearing, was not sustained]

IT IS ORDERED THAT:

1. The above named debtor(s) is released from all dischargeable debts.

2. Any judgment heretofore or hereafter obtained in any court other than this court

is null and void as a determination of the personal liability of the debtor with respect to any of the following:

a. debts dischargeable under 11 U.S.C. Section 523;

b. unlessd heretofore or hereafter determined by order of this court to be non-dischargeable, debts alleged to be excepted from discharge under clauses (2), (4) and (6) of 11 U.S.C. Section 523 (a);

c. debts determined by this court to be discharged under 11 U.S.C. Section 523(d).

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above, are enjoined from commencing, conmtinuing or employing any action, process, or act to collect, recover, or offset any such debt as a personal liability of the debtor, or from property of the debtor, whether or not discharge of such debt is waived.

By the Court
James D. Tokoph
Clerk

Attachment "A" page 1 of Appellee's Bankruptcy Petition

City of Choctaw, Oklahoma
Municipal Building
Choctaw, Oklahoma 73020

Oklahoma State Department
of Health, P.O. Box 53551
Okla. City, Okla. 73105

Judgment, Oklahoma County District Court, Case No. CJ 81-5741, June 8, 1984. Appealed to the Court of Appeals of the State of Oklahoma, Case No. 61,918.

The judgments concern a sewage system built in 1961, by debtor on city easements. The Oklahoma State Department of Health had a standard requirement that such a sewage system be given to the city which documentary evidence showed it was done.

In 1981, the Health Department passed New Standards for sewage systems. An illegal act began: To litigate with debtor which began in 1981, to force him to re-build this system 20 years later to the new standards. The two Oklahoma Courts ruled that debtor must submit new plans and re-build the sewage system to the Oklahoma State Department of Health's arbitrary

adopted 1981, standards, in short, spend an undetermined amount of funds at the Health Department's and City's every whim. This is repugnant to the United States Constitution's ex post facto doctrine. It is a judgment of extortion. It is the debtors intention that these two above numbered judgments be extinguished by this bankruptcy in every demand and it is further debtors intention that any ownership that debtor might have had (if he has any) of the easements and any and all facilities of the said sewage system be forfeited and disclaimed to the public interest in this bankruptcy proceeding. And that this court release and discharge in this bankruptcy proceedings, all debts by debtor from any interest debtor had or was construed to have by judgment or otherwise to the sewage system or alleged to have had by these two aforementioned judgments.

Law Offices of

ELSENER & CADENHEAD

April 6, 1993

Dear Mr. Pointon:

We are presently in the process of preparing a Motion for Summary Judgment and Brief in Support Thereof for the bankruptcy proceeding in your case. In the meantime, we have received a call from Bob Thompson, who I'm sure you will know as Ted Pool's law partner. We had suggested to him that his clients may want to agree to an Order in your case, because the law is clear. We did not actually expect them to take us up on the offer, but thought it was worth an attempt.

Mr. Thompson's position is that you continue to own and benefit from the subject property. The solution that he has suggested is that you convey to the City the water system, and the City will agree

to accept the sewer system. I know you and I have talked somewhat about this concept, but I am not quite sure we have reached an adequate conclusion. We are assuming that you do still claim the water system about which Mr. Thnompson is talking. We also assume that you are not willing to convey that to the City. We know and understand your position with regard to the sewer system, we only wish that the District Court had agreed with you. Without reviewing all of the file and all of my notes I, frankly, cannot remember what you have told me about the water system and why it was not handled in your bankruptcy proceding.

In any case, we did want you to be aware of the "offer" of Mr. Thompson. If it has any appeal to you, please let me know and we will see what can be worked out.

Sincerely yours,

/s/ ED CADENHEAD, For the firm

City of Choctaw

January 10, 1994

Ed Cadenhead
Elsener & Cadenhead
300 East Seminole
Seminole, OK 74818-2067

Re: William Pointon
Redwood Manor Addition (Water/Sewer System)

Dear Mr. Cadenhead:

The City is still interested in negotiating a settlement with Mr. Pointon to bring to an end this long standing legal battle regarding the sewer system in Redwood Manor. However, any settlement, mutually agreed upon by both parties, will be subject to Court approval. I feel this will be necessary to protect all parties' interests and to eliminate any misunderstanding that might arise in the future. The City is interested in providing a public water system, as well as a sewer

system, to serve the 40 plus residents in the Addition. We feel these residents deserves a reliable public system since they have purchased homes in good faith. Therefore, the City would consider an application for commercial zoning of a maximum of ten (10) acres located in the southeast quarter of Section 5. A larger tract of land would necessitate a Planned Unit Development (PUD) which would be more involved and detailed.

We look forward in hearing from you as soon as possible to formulate such a settlement. If you have any questions, please do not hesitate to call me.

Sincerely,

/s/ Robert L. Floyd, City Manager

Supreme Court, U.S.
FILED
AUG 7 1995
CLERK

95-187

CASE NO. [redacted]

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM 1994

William Patrick Pointon, Jr., Petitioner

v.

City of Choctaw, Oklahoma; State of Oklahoma, ex rel.; Oklahoma State Department of Health, Respondents

---

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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PUBLISHER'S NOTE :

ORIGINAL PAGINATION IS NOT CONTINUOUS.

I. QUESTION PRESENTED

1. Whether Petitioner has failed to conform to the rules of this Court and this Court should deny review of this matter.

2. Whether Petitioner has stated any reasons for the Court to exercise its discretion to review this matter.

3. Whether the District Court abused its discretion in denying an award of attorneys fees to Petitioner.

II. PARTIES

1. The list of parties appears in the caption of this case. The Defendants in this case are both public entities; and, as such, there are no parent companies or non-wholly owned subsidiaries.

III. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

TABLE OF CONTENTS

I. QUESTION PRESENTED.....i

II. PARTIES.....ii

III. TABLE OF CONTENTS AND TABLE OF AUTHORITIES.....iii

IV. OPINIONS BELOW.....1

V. GROUNDS FOR JURISDICTION.....1

VI. STATUTES AND RULES.....1

VII. STATEMENT OF CASE.....3

VIII. SUMMARY OF ARGUMENT.....5

IX. ARGUMENT.....6

A. Petitioner has failed to conform to the Rules of this Court and this Court should deny review of this matter.....6

B. Petitioner has failed to state any reasons for this Court to exercise its discretion.....7

C. No fees can be awarded without a finding of bad faith.....8

X. CONCLUSION.....13

TABLE OF AUTHORITIES

Cases: Page

Apex Oil Company v. Belcher Company 855 F. 2d 1009 (2nd Cir. 1988).....8

Continental Trend Resources, Inc. v OXY USA Inc.44F. 3d 1465, 1483 (10th Cir. 1995).....8

Dreiling v. Peugeot Motors of America, Inc.
768 F. 2d 1159 (10 cir. 1985).....9

Hackman v. Valley Fair
932 F. 2d 239 (3rd cit. 1939)
at page 232.....9

In the Matter of COHOES Industrial
Terminal, Inc.931 F. 2d 222
(2nd Cit. 1990).....8

Moore v. Western Surety Company
140 F.R.D. 340 (N.D. Miss. 1991)
at page 349.....8

Powell v. National Football League
139 F.R.D.381 (D.Minn. 1991).....8

Rice v Sioux City Memorial Park
Cemetery, Inc. 349 U.S. 70, 75 S. Ct.
614, 99 L.Ed 897 (1955).....7

United States v. Burson
952 F. 2d 1196, 1203 (10th Cir. 1991)
Cert Den'd, 112 S. Ct. 1702 (1992).....11

United States v. The LTV Corp
(In Re: Chateaugay Corp.)
944 F. 2d 997 (2d Cir 1991).....10,11

Statutes:

28 U.S.C. § 1253.....1,5,6

28 U.S. § 1254.....1,6

28 U.S.C. § 1927.....1,4,8,9

11 U.S.C. § 101 (5)(B).....10

11 U.S.C. § 101(4)(B) now §101(5)(B)...10

Rule 10, Rules of the Supreme Court
of the United States.....2,7

Rule 11, Fed.R.Civ.P.....3,4,8

Rule 6, E.D. Okla.....4

IV. OPINIONS BELOW

This appeal is brought pursuant to In re:William Patrick Pointon, Jr.; William Patrick Pointon, Jr. Plaintiff-Appellant v. City of Choctaw, Oklahoma; State of Oklahoma, ex rel.; Oklahoma State Department of Health, Defendants-Appellees. No.94-7053 (D.C. No. CV-93545)(E.D. Okla.)(Ct. App. 10th Cir.), March 28, 1995; rehearing denied, May 2, 1995.

V. GROUNDS FOR JURISDICTION

(1) Petitioner has filed a document titled "Notice of Appeal to the Supreme Court of the United States,", rather than a Petition for Writ of Certiorari. Petitioner states that this Appeal is brought pursuant to 28 U.S.C. § 1253. Appellee asserts that Pointon, in his attempt to appeal a decision of the United States Court of Appeals for the Tenth Circuit denying Pointon attorneys' fees, has not properly invoked the jurisdiction of this Court through this statute which addresses direct appeals from decisions of district courts of three judges. Appellees assert that jurisdiction of this Court would be invoked through 28 U.S.C. § 1254. Petitioner Pointon would have 90 days after entry of judgment from the United States Court of Appeals to file this petition, pursuant to Rule 13 of the Supreme Court Rules.

VI. STATUTES AND RULES

28 U.S.C. § 1927

Counsel's liability for excessive costs.

Any attorney or other person admitted to conduct cases in any court of the United

States or any territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excessive costs, expenses and attorneys' fees reasonable incurred because of such conduct.

Rule 10, Rules of the Supreme Court of the United States

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States Court of appeals has rendered a decision in conflict with the decision of another United States Court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctions such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

(c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Rule 11(c), Fed. R.Civ. P.

> Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

VII. STATEMENT OF CASE

The Court of the United States for the Eastern District of Oklahoma sustained a Summary Judgement entered by the Bankruptcy Court finding that William Patrick Pointon, Jr.'s (Pointon) discharge in bankruptcy relieved him from responsibility for complying with an order previously entered in 1984 in the District Court of Oklahoma County, State of Oklahoma, Case No. CJ-81-5471, which ordered Pointon to take certain steps to accomplish a clean-up of a sewer lagoon he had built for a subdivision in 1961. The bankruptcy court held that the 1984 order constituted a dischargeable debt which was discharged. The City of Choctaw and the Oklahoma State Department of Health appealed the ruling to the district court which ruled in favor of Pointon. Pointon then filed his Application for

Attorney Fees, Sanctions, and Contempt Citation, pursuant to 28 U.S.C. § 1927, Fed. R. Civ. P. 11, and E.D. Okla. R.6, arguing that the City and the OSDH should not have pursued enforcement of the 1984 order in light of the bankruptcy. The United States District Court for the Eastern District of Oklahoma, without benefit of a response to Pointon's Application, entered a minute order, denying Pointon's application in its entirety "for the reason the Court cannot find that this appeal was frivolous, vexatious, or in bad faith." Pointon then appealed from that order denying attorneys' fees to the Tenth Circuit which reviewed the district court's denial of attorney's fees for abuse of discretion. The Tenth Circuit, on March 28, 1995, issued an order concluding that it "cannot find that the district court abused its discretion in holding that the appeal to that court was not frivolous, vexatious, or in bad faith," and affirming the judgment of the United States District Court for the Eastern District of Oklahoma. Pointon sought rehearing which was denied by the Tenth Circuit May 2, 1995. On May 15, 1995, Appellees received an unstamped

document titled "Notice of Appeal to the Supreme Court of the United States," stating that an appeal is brought from the Order denying rehearing, pursuant to 28 U.S.C. § 1253. Appellees are responding to that "Notice" within the 30 day time frame required for Petitions for Writs of Certiorari in a conservative effort to be responsive to the requirements of this Court; however, such response does not constitute a waiver of any objections to the method or format Petitioner has utilized in presenting this appeal which are addressed below.

VII. SUMMARY OF ARGUMENT

Appellees content that Appellant Pointon has not properly presented to this Court a Petition for Writ of Certiorari and has not conformed to the Rules of this Court and review should be denied. In the event that this Court should grant a review of the decision of the Tenth Circuit, then Appellee contends that the decision should be affirmed, on the grounds that the District Court did not abuse its discretion in denying Pointon's application and that Appellees' actions to seek enforcement of the 1984 order were not frivolous, vexatious, or in bad faith,

because whether injunctive orders constitute "claims" so as to be dischargeable in bankruptcy are debatable questions, because Pointon raised the issue in his declaratory judgment action, and because the Appellees were acting in pursuit of the public health, safety, and welfare.

IX. ARGUMENT

A. Petitioner has failed to conform to the Rules of this Court and this Court should deny review of this matter.

Petitioner has filed a document titled "Notice of Appeal to the Supreme Court of the United States, " rather than a Petition for Writ of Certiorari, as provided in 28 U.S.C. § 1254. In the document, Pointon states that the appeal is brought pursuant to 28 U.S.C. § 1253. However, that section addresses appeals from three-judge district courts in injunctive matters. Petitioner has failed to include the information, in content or format, required by the rules of this Court addressing Petitions for Writ of Certiorari, especially Rules 12, 13, 14, and 24. The mandatory use of the word "shall" in Rule 14 evinces the clear intent that petitions must conform to these requirements. This paucity of information has rendered it virtually

impossible for this Court to assess this matter and for the Appellees to respond except to speculative and anticipated issues and arguments.

B. Petitioner has failed to state any reasons for this Court to exercise its discretion.

In the event this Court should determine that Petitioner's Notice of Appeal is properly filed, then Appellees submit that the ruling of the Tenth Circuit is in accord with established precedent in related decisions and this Court should deny Petitioner's request for review. Pursuant to Rule 10, Rules of the Supreme Court of the United States, review on a writ of certiorari is a matter of judicial discretion to be granted "only when these are special and important reasons" for review. Petitioner has failed to state any reasons and an analysis of the case clearly reveals that none exist. In Rice v Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70, 74, 755 Ct. 614, 99 L Ed. 897 (1955), the Supreme Court stated that "special and 'important reasons' imply a reach to the problem beyond the academic or the episodes." Petitioner has not met this criterion. Awards of costs, expenses, and attorneys' fees, pursuant

to 28 U.S.C. § 1927 and Rule 11, F. R. Civ. P., are awarded at the Court's discretion. Powell v. National Football League, 139 F.R.D. 381 (D. Minn. 1991). Sanctions imposed by a bankruptcy court under federal statute for an attorney's alleged unreasonable or vexatious multiplication of proceedings are reviewed under an "abuse of discretion" standard. See Continental Trend Resources, Inc. v. OXY USA Inc., 44 F. 3d 1465, 1483 (10th Cir. 1995). In the Matter of COHOES Industrial Terminal, Inc., 931 F. 2d 222 (2nd Cit. 1990); Apex Oil Company v. Belcher Company, 855 F. 2d 1009 (2nd Cir. 1988).

C. No fees can be awarded without a finding of bad faith.

The Court, in Moore v. Western Surety Company, 140 F.R.D. 340 (N.D. Miss. 1991), at p., 349, held:

> Thus an award of attorney fees under § 1927 'must be of an egregious nature, stamped by bad faith that is violative of recognized standards in the conduct of litigation.'

The Court went on to state:

> In this circuit sanctions under Section 1927 are imposed when 'the claim advanced is unreasonable or

> is not brought with a reasonable good faith belief that it is justified.'

A similar requirement was made in the case of Hackman v. Valley Fair, 932 F. 2d 239 (3rd Cit. 1939), at p. 232, wherein the Court found:

A finding of willful bad faith on the part of the offending lawyer is a prerequisite for imposing attorney fees under this provision (addressing 28 U.S.C. § 1927). Bad faith is a factual determination reviewable under the clearly erroneous standard. Once a finding of bad faith has been made, the appropriateness of sanctions is a matter entrusted to the discretion of the district court.

In the case of Dreiling v. Peugeot Motors of America, Inc., 768 f. 2d 1159 (10 Cir. 1985), the Court held:

Under § 1927 a district court may assess an award of fees against an attorney appearing before the Court if (1) the actions of the attorney multiply the proceedings and (2) the attorney's actions re vexatious and unreasonable. (citations omitted) An attorney's actions are considered vexatious and unreasonable under § 1927 if the attorney acted in bad faith.

The Court also held:

> The power to assess costs against an attorney under § 1927, however, is a power that must be strictly construed and utilized only in instances evidencing a 'serious and standard disregard for the orderly process of justice.'

The Court then stated that the finding of a District Court in assessing an attorney's liability under § 1927 would not be set aside on

appeal unless the court established that the findings were clearly erroneous. In the instant case, the District Court found that the appeal was not frivolous, vexatious, or undertaken in bad faith. This decision was affirmed by the Tenth Circuit which stated that it "cannot find that the district court abused its discretion in holding that the appeal to that court was not frivolous, vexatious, or in bad faith."

In the March 28 Order, the Tenth Circuit stated:

> Appellees argued on appeal to the district court that the 1984 order could not properly have been discharged because it was not a 'claim;'within the meaning of the Bankruptcy Code. See 11 U.S.C. §101(5)(B). Whether an order for injunctive relief is a claim within the meaning of the Bankruptcy Code is a debatable question. See United States v. The LTV Corp.(In Re Chateaugay Corp.), 944 F.2d 997, 1008 (2d Cir 1991)(discussing types of injunctions that do or do not constitute a 'claim' under 11 U.S.C. §101 (4)(B) [now § 101(5)(B)]). In addition, appellees' argument was invited by Pointon, who raised the issue of dischargeability in his declaratory judgment

> action. United States v. Burson, 952 F.2d 1196, 1203 (10th Cir. 1991)(holding that invited error doctrine 'prevents a party who induces an erroneous ruling from being able to have it set aside on appeal'), Cert. Denied, 112 S. Ct. 1702 (1992)."

The City of Choctaw and the State of Oklahoma have attempted to eliminate the public health, safety, and environmental problems created by the sewer lagoon owned by Pointon. Certainly the efforts of these two public bodies to enforce an order requiring Pointon to clean up these problems could not be construed to be in bad faith, frivolous, or vexatious.

In In Re: Chateaugay Corp., 944 F. 2d 997, 1002, (2d Cir. 1991), the Court addressed the conflict that may exists between the Bankruptcy Code and efforts to clean up the environment:

> We agree that the Bankruptcy Code and CERCLA point toward competing objections. The code aims to provide reorganized debtors with a fresh start, an objective made more feasible by maximizing the scope of a discharge. CERCLA aims to clean up environmental damage, an objective that the enforcement agencies in

> this litigation contend will be better served if their entitlement to be reimbursed for CERCLA response costs based on pre-petition pollution is not considered to be a 'claim' and instead may be asserted at full value against the reorganized corporation.

The 1984 order did not grant a money judgment against Pointon, nor directly require expenditures of funds by Pointon, and these public bodies, in pursuing Pointon, contended that there was a distinction between the debts discharged and Pointon's obligation to comply with the 1984 Order and deal with the health, safety and environmental problems which continued to exist after the bankruptcy because of a continuing discharge of sewage into the sewage lagoon. Even though the Court determined that Mr. Pointon's only method of complying with the clean up order was an expenditure of funds and, as such, his obligation was discharged, the Court did not find that the Appellee's actions had been undertaken in bad faith, vexatiously, or frivolously. The decision of the Tenth Circuit was in accord with the holdings of other courts on similar matters.

CERTIFICATE OF SERVICE

I, hereby certify that I am counsel of record for the Respondent and that on the 13 day of June, 1995, three (c) correct copies of the foregoing Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit were mailed, postage prepaid, to the following:

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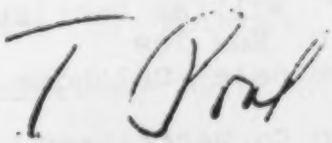
Of Counsel for State of Oklahoma, ex rel., State Department of Health

* Counsel of record

Appellees assert that Appellant Pointon's request for review should be denied.

X. CONCLUSION

For the reasons stated herein, Appellees respectfully assert that Appellant Pointon's request for review by this Court be dismissed and denied.



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95-187

(3)

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CASE NO. 94-7053

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM 1994

William Patrick Pointon, Jr., Petitioner

v.

City of Choctaw, Oklahoma; State of Oklahoma, ex rel.; Oklahoma State Department of Health, Respondents

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

SUPPLEMENT TO THE BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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10 pp

TABLE OF CONTENTS

A. Matters presented not available at the time of the last filing of the City of Choctaw, State of Oklahoma, and the State of Oklahoma, ex rel. the State Department of Health and presented in response to Petitioner Pointon's Petition for Writ of Certiorari. 1

B. Misstatements of Fact and Law Contained in Petitioner's Writ. The only question for consideration before this Court would involve whether there was abuse of discretion by the lower Court in denying attorney fees to Petitioner. 2

C. Concise Statement of the Case. 3

D. Argument 4

E. Conclusion 5

A. Matters presented not available at the time of the last filing of the City of Choctaw, State of Oklahoma, and the State of Oklahoma, ex rel. the State Department of Health and presented in response to Petitioner Pointon's Petition for Writ of Certiorari.

This response is presented as a response to Petitioner's "Petition for Writ of Certiorari" (hereinafter "Writ) and as a supplement to Respondents' "Brief in opposition to the Petition for Writ of Certiorari to the United State Court of Appeals for the Tenth Circuit," (hereinafter, "Opposition Brief," incorporated by reference in its entirety) filed prior to the filing of Petitioner's Writ, but filed after and in response to Petitioner's "Notice of Appeal." This issue was previously addressed in the Opposition Brief, Part VII. This supplemental document represents an attempt by Petitioners to respond to the unusual filing sequence as expeditiously and efficiently as possible.

B. Misstatements of Fact and Law Contained in Petitioner's Writ. The only question for consideration before this Court would involve whether there was abuse of discretion by the lower Court in denying attorney fees to Petitioner.

Petitioner's Brief is replete with unsubstantiated and argumentive factual allegations and conclusions regarding the historical activities of the parties which the Respondents categorically deny, and, more important to the instant matter, are totally irrelevant to the issues before this Court. These, or similar accusations and allegations, were not found to be supported by the evidence in any of the numerous lower Courts in which Petitioner has pled his case and are not properly before this Court as a retrial of factual issues unrelated to issues involving dischargeable debts and attorney fees brought in the bankruptcy proceeding from which this appeal arises. The facts of the case have been set forth in the Order of the Tenth Circuit (Pet.App.)(A and B) and in the Opposition Brief. The Respondents respectfully request that Petitioner's extraneous "Questions Presented" and pejorative narrative be disregarded. On the grounds that they are irrelevant and improperly presented as a part of this proceeding and, therefore, do not require any further response from Respondents, the Respondents will not address

these accusations any further unless requested to do so by this Court.

C. Concise Statement of the Case.

The lower Court did not abuse its discretion in denying an award of attorneys fees to Petitioner.

Petitioner appealed to the Tenth Circuit from the denial of attorney's fees by the Bankruptcy Court which stated that it could not find that Respondents' appeal was "frivolous, vexatious or in bad faith." The Tenth Circuit affirmed this finding. Petitioner then requested rehearing with suggestion for rehearing in banc. Concluding that the original disposition was correct, members of the hearing panel denied the petition on its merits and the suggestion for rehearing in banc. Therefore, even though Petitioner requests that this Court impose sanctions and compensatory damages, the only issue which could be properly before this Court involves the Court's denial of attorney fees to Petitioner. This issue has been addressed by Respondents in their Opposition Brief, although the Petitioner had not at that time filed his Writ.

D. Argument

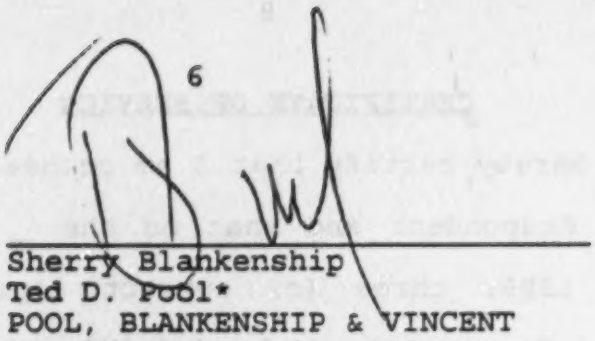
The lower Court did not abuse its discretion in denying attorney fees to Petitioner.

Petitioner has presented cases involving egregious circumstances in which attorney fees were awarded, proffering the unsubstantiated argument that they are factually analogous to the instant case. Petitioner's argument is unavailing. There is no evidence whatsoever in the instant case to indicate any similarities between the actions of the Respondents and the persons or circumstances in the cases submitted by Petitioner. In the instant case, the lower Courts specifically determined that they could not find that Respondents had acted frivolously, vexatiously, or in bad faith. The Courts found that whether injunctive relief is a claim as defined in the Bankruptcy Code is a debatable issue, and that Pointon himself had raised the issue of dischargeability in his declaratory judgment action and was, therefore, prevented from appealing the issue through the invited error doctrine. The City of Choctaw and the State of Oklahoma were properly performing

their obligations to ensure and protect the public health, safety, and well fare fromt he enviromental problems caused by Panton's lagoon which the City never accepted. There actions do no fall within the categories for which attorney fees can be awareded. Clearly the lower Court did not abuse its discretion in denying attorney fees to Petitioner Pointon. Respondents respectfully request that Petitioners' Writ be denied.

E. Conclusion

For the reasons stated herein, the Respondents respectfully request that this Court dismiss and deny Petitioner's Petition for Writ of Certiorari.



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Counsel of record for State of Oklahoma, ex rel., State Department of Health

*Counsel of Record6

CERTIFICATE OF SERVICE

I, hereby certify that I am counsel of record for the Respondent and that on the _____ day of August, 1995, three (c) correct copies of the foregoing Supplement to the Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit and Reply to the Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit were mailed, postage prepaid, to the following: Mr. William Patrick Pointon, Jr.
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